

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

This document relates to:
ALL ACTIONS

MDL No. 2843

Case No. 18-md-02843-VC

**PRETRIAL ORDER NO. 38:
GRANTING MOTION FOR LEAVE
TO FILE SECOND AMENDED
CONSOLIDATED COMPLAINT**

Re: Dkt. No. 397


The plaintiffs' motion for leave to file a second amended consolidated complaint is granted. It seems very likely that the claims by the U.K. plaintiffs should be adjudicated in the U.K. rather than here, as a matter of both the 2018 revised terms of service and general principles of *forum non conveniens*. But on the current record, the Court cannot conclude definitively that amendment with respect to named plaintiffs from the U.K. would be futile. If an amended complaint is filed including U.K. plaintiffs, the Court will entertain a motion to dismiss for *forum non conveniens* or other appropriate motion.

The amended complaint must be filed within 14 days of this order. The parties are encouraged to consider whether Facebook's previously-filed answer can be deemed the operative responsive pleading. In the event the previously-filed answer is deemed the operative responsive pleading, this will not preclude the defendants from moving to dismiss the U.K. plaintiffs on the ground that their claims cannot or should not be adjudicated in this forum. If the parties determine that Facebook must file another responsive pleading, it is due 21 days after the amended complaint is filed. Any renewed motion to dismiss raising arguments under Rule 12(b)(6) with respect to the U.S. plaintiffs would almost certainly be barred by Rule 12(g)(2) and

would hinder the efficient resolution of this case. *See In re Apple iPhone Antitrust Litig.*, 846 F.3d 313, 318 (9th Cir. 2017).

IT IS SO ORDERED.

Dated: July 21, 2020



VINCE CHHABRIA
United States District Judge